

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
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(www.co.mo.md.us/council/board.html)

Case No. A-5788

PETITION OF CHEVY CHASE BANK FSB
(Hearing held September 4, 2002)

OPINION OF THE BOARD
(Effective date of Opinion, September 19, 2002)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-4.343(b)(1). The petitioner proposes to construct an 8-foot fence that requires a twenty-three (23) foot variance as it is within two (2) feet of the rear lot line. The required setback is twenty-five (25) feet.

Martin Hutt, Esquire, and Kathleen Kulenguski, architect, represented the petitioner at the public hearing. Martha Harris, an adjoining neighbor that resides at 13214 Cara Lane, appeared in support of the variance request.

The subject property is Part of Parcel A, Carole Acres South Subdivision, located at 13301 New Hampshire Avenue, Silver Spring, Maryland, in the C-1 Zone (Tax Account No. 00332305).

Decision of the Board: Requested variance **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes demolish an existing 6-foot fence and reconstruct an 8-foot board-on-board fence. The 6-foot fence is currently located at the side and rear yard boundaries and has existed on the property for 30 years.
2. The property is located at the intersection of New Hampshire Avenue and Wolf Drive. The property is surrounded on three sides by commercially zoned properties and backs up to residentially zoned lots. See, Exhibit No. 9(c) [Zoning Vicinity Map].
3. Ms. Kulenguski testified that the petitioner proposes to demolish the existing commercial building and replace it with a bank facility and a general retail or office use. Ms. Kulenguski testified that the fence would be screened by an existing, evergreen tree line. See, Exhibit Nos. 13(a) through 13(i).
4. Ms. Harris testified that she is a long-time resident of the neighborhood and that her property backs up to the subject property. Ms. Harris testified that in

the last three years she has witnessed two robberies on the subject property, and that on both occasions the robbers scaled the existing 6-foot fence. Ms. Harris testified that an 8-foot fence would be a deterrence to crime, provide security, and abate the noise from New Hampshire Avenue.

5. The record contains a letter of support from the Greater Colesville Citizens Association. See, Exhibit No. 4.

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) *By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The property has an existing 6-foot fence is located in the property's side and rear yard boundaries. The fence was built 30 years ago. The petitioner proposed to replace the existing fence with an 8-foot board-on-board fence. The property is surrounded on three sides by commercially zoned properties and backs up to residentially zoned lots. The Board finds that this is an exceptional circumstance and that the strict application of the regulations would result in practical difficulties for the property owner.

- (b) *Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the fence, as proposed, is the minimum reasonably necessary.

- (c) *Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The proposed construction will continue the commercial use of the property and provide a barrier between the commercial and residential properties. The Board finds that the requested variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) *Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The record contains no testimony or correspondence in opposition to the variance request. The record does contain a letter of support from the Greater Colesville Citizens Association. The neighbor most impacted by

the fence also supports the variance request. The fence would be screened by an existing evergreen tree line and the Board finds that the variance will not be detrimental to the use and enjoyment of adjoining and neighboring properties.

Accordingly, the requested variance of twenty-three (23) feet from the required twenty-five (25) foot rear lot line setback for the construction of an 8-foot fence is granted subject to the following conditions:

1. The petitioner shall be bound by all of its testimony and exhibits of record, and the testimony of its witnesses and representations of its attorney, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 8(a) through 8(g) and 14.

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Louise L. Mayer, seconded by Angelo M. Caputo, with Allison Ishihara Fultz and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the following Resolution. Board member Donna L. Barron was necessarily absent and did not participate in this Resolution.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 19th day of September, 2002

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the

County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.